Filed 6/30/09 In re Christian D. CA4/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| In re CHRISTIAN D., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>CHRISTIAN D.,<br><br>Defendant and Appellant. | D053460<br><br>(Super. Ct. No. J218881) |

APPEAL from a judgment of the Superior Court of San Diego County, Amalia L. Meza, Judge. Affirmed.

After the juvenile court denied his motion to suppress evidence (Welf. & Inst. Code, § 700.1), Christian D. admitted an allegation that he possessed a folding knife on school grounds (Pen. Code, § 626.10, subd. (a)). The court declared Christian a ward of the court (Welf. & Inst. Code, § 602), and placed him on supervised probation.

Christian appeals, contending the court erred by denying his motion to suppress because the search that revealed the knife violated his Fourth Amendment rights.

FACTS

On February 22, 2008, at 8:55 a.m., a teacher at Hoover High School informed vice-principal Andreas Trakas about tagging or graffiti in the stairway of the 300 building on campus. Trakas and Daniel Acevedo, the on-campus police officer, went to the stairway to investigate. Class was in session, but Trakas and Acevedo saw Christian and another student walking up the stairs.

Trakas asked the youths why they were in the building and why they were not in class. Christian and the other youth replied they were there to see a friend. Trakas found their presence in the stairway—rather than in class—and their answer suspicious. "It wasn't a social hour," Trakas testified. "It wasn't lunchtime. It wasn't a passing period. All the kids were in class. They had no business being in that building. There should not have been anybody outside of class." Trakas also was suspicious because, among other things, neither Christian nor the other youth had passes or documentation, and their presence in a building off to the side of the campus indicated they had managed to avoid the school's seven supervisors on the grounds of the campus.

Trakas and Acevedo escorted Christian and his companion to the administrative office and separated them. Trakas interviewed Christian and asked him if he had anything that he was not supposed to have in his possession. Trakas also requested Christian empty his pockets. In response Christian emptied one pocket and handed over some markers. Trakas believed that Christian seemed nervous. "He seemed a little bit

withdrawn, a little bit jumpy," Trakas testified. "His eyes were—all I can say as an administrator, he seemed to me in my experience, working with kids the last 11 years, he just seemed nervous."

Trakas asked Christian if he had a weapon and requested he empty his other pocket. Christian complied and handed Trakas a folding knife.

DISCUSSION

Christian contends the court erred by denying his motion to suppress because he did not consent to a search, and vice-principal Trakas did not have a reasonable suspicion that a search would turn up evidence of wrongdoing. The contention is without merit.

"The standard of review of a trial court's ruling on a motion to suppress is well established and is equally applicable to juvenile court proceedings. ' "On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court's ruling. [Citation.] We must uphold those express or implied findings of fact by the trial court that are supported by substantial evidence and independently determine whether the facts support the court's legal conclusions. [Citation.]" ' " (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

In the context of the rights of students on a school campus, public school officials are considered government agents within the purview of the Fourth Amendment, making their conduct subject to the constitutional rights of their students against arbitrary and capricious detentions and unreasonable searches and seizures. (*In re Randy G.* (2001) 26 Cal.4th 556, 567; *In re William G.* (1985) 40 Cal.3d 550, 561; *In re Lisa G.* (2004) 125 Cal.App.4th 801, 805.) Greater flexibility is required when examining the Fourteenth

Amendment rights of students than other persons in searches and seizures because the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds must be balanced against the child's interest in privacy. (*New Jersey v. T.L.O.* (1985) 469 U .S. 325, 339.) As the United States Supreme Court concluded:

> "[T]he accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." (*Id.* at p. 341.)

The reasonableness of a search under this standard is generally determined by a two-fold inquiry: (1) whether the search was justified at its inception; and (2) whether the scope of the search, as actually conducted, was reasonably related to the circumstances justifying the initial search. (*New Jersey v. T.L.O.*, *supra*, 469 U.S. at p. 341.) Ordinarily, a search of a student by a school official will be justified at its inception when there are reasonable grounds for suspecting the search will disclose evidence the student has violated or is violating the law or school rules. (*Id.* at pp. 341-342.) "There must be articulable facts supporting that reasonable suspicion. . . . Respect for privacy is the rule—a search is the exception." (*In re William G.*, *supra*, 40 Cal.3d at p. 564.) A search is permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in the context of the age and sex of the student. (*Ibid.*)

In addition, school officials may detain a student on campus without reasonable suspicion the student has violated the law as long as the detention is not arbitrary, capricious or for harassment. (*In re Randy G., supra*, 26 Cal.4th at p. 567.) The burden is on the People to prove no Fourth Amendment violation occurred. (*People v. Sirhan* (1972) 7 Cal.3d 710, 741, overruled on other grounds in *Hawkins v. Superior Court* (1978) 22 Cal.3d 584, 593, fn. 7.)

Applying the above standards in this case, we conclude there were articulable facts which gave rise to a reasonable suspicion justifying the searches, and the searches were reasonable and permissible in scope. Christian does not contest the validity of his detention by Trakas and Acevedo; thus, he concedes his detention was not arbitrary, capricious or for purposes of harassment.

As to the validity of the search that followed Christian's detention, the undisputed evidence showed that Trakas had formed reasonable suspicion based on the teacher's report that there was graffiti in the stairway of the 300 building. Christian and his companion were out of class without permission. Further, the pair was in the stairway of the 300 building, and there was no legitimate reason for their presence. Christian's and his companion's explanation for their presence—that they were visiting a friend—also was dubious. Hence, Trakas had reasonable suspicion based on these facts that Christian may have participated in the tagging and that markers used in the graffiti might be found in his pockets. Therefore, Trakas's first request to Christian to empty his pockets was reasonable and proper. Christian's reaction to the first request was to empty only one pocket. In the opinion of Trakas, who had many years of experience in dealing with high

school students, Christian was nervous as he pulled out the markers from his pocket. In light of Christian's nervousness and his half compliance with the first request to empty his pockets, which yielded incriminating evidence (markers), Trakas had reasonable suspicion to make the second request to Christian to empty his other pocket.

Based on the totality of the circumstances, it was objectively reasonable for Trakas to suspect Christian of engaging in wrongful behavior in two respects. The first search or request for Christian to empty his pockets was justified and reasonably related to the tagging of the stairway in the 300 building. (See *In re Lisa G., supra,* 125 Cal.App.4th at p. 807 ["A correlation between the wrongful behavior of the student and the intended findings of the search is essential for a valid search of the student under the Fourth Amendment."].) The search was, therefore, justified at its inception. Trakas's second request to Christian to empty his pockets also was justified and rationally related to an objectively reasonable search for weapons in light of Christian's behavior after the first request.

Accordingly, we conclude the searches of Christian were reasonable and the juvenile court's ruling must be upheld as supported by the totality of the circumstances. Having so decided, it is unnecessary to address the issue of consent.

## DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.